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E-FILE

FILED

JUL 25 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADR

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

FERNANDO RAMIREZ

Plaintiff,

vs.

DOSA PLACE INC. dba DOSAIPPLACE,

UMAKANTH UPPALAPATI dba DOSAI

PLACE and DOSA PLACE INC.

Defendants

C08 03613

PVT

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL:

- 1) Violation of California Labor Code Section 510;
- 2) Violations of the Federal Fair Labor Standards Act;
- 3) Violation of California Business and Professions Code Section 17200;
- 4) Violation of California Labor Code Section 201;
- 5) Violation of California Labor Code Section 226.

NATURE OF CLAIM

1. This is an action on behalf of Fernando Ramirez who has been employed on a salary basis Dosa Place Inc. dba Dosaipalace, Umakanth Uppalapati dba Dosai Place And Dosa Place Inc. during the last four years prior to the filing of this Complaint, seeking damages arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and the California Wage Orders and statutes.
2. Plaintiffs seek compensatory damages for unpaid wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C. §216(b), waiting time penalties under California Labor Code § 203, damages for inadequate pay statements under California Labor Code Section 226, and attorney's fees, costs, pre judgment interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b), and restitution under California Unfair Trade Practices Act under California Business and Professions Code § 17203.

SUBJECT MATTER JURISDICTION AND VENUE

3. This Court is a proper venue, since all events giving rise to this lawsuit have occurred in this district.
4. Subject matter jurisdiction of this action of this Court is based upon Fair Labor Standards Act, 29 U.S.C. §§201 et. seq. and the pendant jurisdiction of this Court.

GENERAL ALLEGATIONS

5. At all times relevant herein Plaintiff Fernando Ramirez was a resident of Santa Clara County, California.
6. At all times relevant herein, Defendants Dosa Place Inc. dba Dosaipalace, Umakanth Uppalapati dba Dosai Place And Dosa Place Inc. employed Plaintiff Fernando Ramirez as a kitchen worker in their restaurant in Santa Clara County.

- 1 7. At all times relevant herein Dosa Place Inc. dba Dosaipalace, Umakanth Uppalapati dba
2 Dosai Place And Dosa Place Inc. conducted business in Santa Clara County,
3 California.
- 4 8. Individual Defendant Umakanth Uppalapati was, according to information and belief,
5 the officer, owner, or employee of Defendants Dosa Place Inc. dba Dosai Place.
6 having control over the Plaintiff's work condition and work situation.
- 7 9. Defendants Dosa Place Inc. dba Dosaipalace, Umakanth Uppalapati dba Dosai Place
8 And Dosa Place Inc. shall be hereinafter collectively known as "Defendants".
- 9 10. Plaintiff Fernando Ramirez shall hereinafter be known as "Plaintiff".
- 10 11. Plaintiff was according to information and belief, an employee of Defendants acting in
11 the normal course and scope of employment duties with Defendants as a kitchen
12 worker.
- 13 12. During the course of Plaintiff's employment with Defendants, Plaintiff regularly
14 worked more than 8 hours per day and 40 hours per week, hours for which Plaintiffs
15 were not properly compensated.
- 16 13. Defendants paid Plaintiff for his labor by cash.
- 17 14. Defendants did not issue a paystub with deductions to Plaintiff.
- 18 15. Plaintiff did not perform "exempt" duties in his position as a laborer with Defendants
19 and thus was not subject to any exemption under the Fair Labor Standards Act, 29 CFR
20 541.112, 541.209 and 541.209. The Plaintiff was not even marginally responsible for
21 management or administrative functions, and their primary job duties did not require
22 the exercise of independent discretion and judgment or regularly require invention or
23 imagination in a recognized field of artistic endeavor more than fifty percent of her
24 working time.
- 25

1 16. At no time during the Plaintiff's employment did Plaintiffs maintain any professional
2 license with the state or practice any recognized profession, nor did Plaintiffs
3 exclusively manage any division of Defendants business where he customarily and
4 regularly exercised discretionary powers or perform services of management. Plaintiff
5 did not directly supervise any employees nor did he participate in the development of
6 general administrative policies of Defendants.

7 COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510

8 FAILURE TO PROPERLY PAY OVERTIME WAGES

9 17. Plaintiff re-alleges and incorporates paragraphs 1-18 as if fully stated herein.

10 18. At all times relevant herein, California Labor Code Section 501, which applies to
11 Plaintiff's employment by defendants, provided that all employees are entitled to
12 payment at the rate of time and one half for hours in excess of 8 in one day, or 40 hours
13 in one week, and double time for hours in excess of 12 in one day.

14 19. Labor Code Section 1194 provides that it is unlawful for employers not to make the
15 required overtime payments identified in the preceding paragraph and that employees
16 not paid such payments can recover any monies owed by civil action.

17 20. Defendants therefore owe Plaintiff lost wages and penalties in an amount subject to
18 proof.

19 21. Defendants have failed and refused and continue to fail and refuse to pay Plaintiff the
20 amount owed.

21 22. Defendants' failure to pay Plaintiff the required sum violates the provisions of Labor
22 Code Sections 510 and 1194 and is therefore unlawful.

23 23. Pursuant to Labor Code Section 1194(a), Plaintiff requests that the court award
24 Plaintiffs reasonable attorney's fees and costs incurred by him/her in this action.

25 COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT

1 FAILURE TO PROPERLY PAY OVERTIME WAGES

2 24. Plaintiff re-alleges and incorporates paragraphs 1-23 as if fully stated herein.

3 25. At all relevant times herein, Plaintiff's employment was subject to the provisions of the
4 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and
5 Plaintiffs were an individual employee covered by virtue of Plaintiff's direct
6 engagement in interstate commerce.

7 26. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work
8 performed in excess of forty hours per week, unless specifically exempted by the law.

9 27. Although Plaintiffs were not so exempt during employment with Defendants,
10 Defendants knowingly caused and permitted Plaintiffs to regularly work in excess of
11 forty hours per week without paying Plaintiffs one and one half of Plaintiff's regular
12 rate of pay.

13 28. By not paying overtime wages in compliance with the FLSA, defendants violated
14 Plaintiff's rights under the FLSA.

15 29. Defendants therefore owe Plaintiffs lost wages and penalties in an amount subject to
16 proof.

17 30. Therefore, as a direct and proximate result of defendants' failure to pay proper wages
18 under the FLSA, Plaintiffs incurred general damages in the form of lost overtime
19 wages.

20 31. Defendants intentionally, with reckless disregard for their responsibilities under the
21 FLSA, and without good cause, failed to pay Plaintiff's proper wages, and thus
22 defendants are liable to Plaintiffs for liquidated damages in an amount equal to lost
23 overtime wages, pursuant to 29 U.S.C. § 216(b) of the FLSA.
24
25

1 32. Plaintiff was required to retain legal assistance in order to bring this action and, as such,
2 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of
3 the FLSA.

4 COUNT THREE: VIOLATION OF CA LABOR CODE SECTION 201

5 FAILURE TO PAY WAGES DUE AND "WAITING TIME" PENALTIES

6 33. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-31 as if fully stated
7 herein.

8 34. At the time Plaintiff's employment with Defendant was terminated, Defendants' owed
9 Plaintiff certain unpaid overtime wages.

10 35. Failure to pay wages owed at the time of an employee's termination as required by
11 Labor Code §201 subjects the employer the payment of a penalty equaling up to 30
12 days wages, as provided for in Labor Code § 203.

13 36. As of this date, Defendants have failed and refused, and continue to fail and refuse, to
14 pay the amount due, thus making defendants liable to Plaintiff for penalties equal to
15 thirty (30) days wages.

16 37. Defendants therefore owe Plaintiff lost wages and penalties in an amount subject to
17 proof.

18 38. Pursuant to Labor Code Section 218.5, Plaintiff requests that the court award Plaintiff's
19 reasonable attorney's fees and costs incurred in this action.

20 39. Pursuant to Labor Code Section 218.6, Plaintiff requests that the court award interest
21 on all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),
22 accruing from the date the wages were due and payable.

23 COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE SECTION
24 17200 UNFAIR BUSINESS PRACTICES
25

1 40. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-41 as if fully stated
2 herein.

3 41. At all times relevant herein, Plaintiff's employment with Defendants was subject to the
4 California Labor Code and applicable Wage Orders promulgated by the California
5 Industrial Welfare Commission, which required all employees to be paid overtime for
6 work performed in excess of forty hours per week or eight hours per day, unless
7 specifically exempted by the law.

8 42. At all times relevant herein, as the employer of Plaintiffs, defendants were subject to
9 the California Unfair Trade Practices Act (California Business and Professions Code §
10 §17000 et seq.), but failed to pay the Plaintiffs overtime pay as required by applicable
11 California Labor Code and applicable Wage Orders.

12 43. During the period Plaintiff was employed with the Defendant, Defendants failed to pay
13 Plaintiffs legally required overtime pay to which he was legally entitled, with
14 defendants keeping to themselves the amount which should have been paid to Plaintiff.

15 44. In doing so, defendants violated California Unfair Trade Practices Act, Business and
16 Professions Code §17200, et seq. by committing acts prohibited by applicable
17 California Labor Code provisions, California Wage Orders, and the FLSA, thus giving
18 them a competitive advantage over other employers and businesses with whom
19 defendants were in competition and who were in compliance with the law.

20 45. As a direct and proximate result of defendants' violations and failure to pay the
21 required overtime pay, the Plaintiff's rights under the law were violated and the
22 Plaintiff incurred general damages in an amount subject to proof.

23 46. Defendants had been aware of the existence and requirements of the Unfair Trade
24 Practices Act and the requirements of state and federal wage and hours laws, but
25 willfully, knowingly, and intentionally failed to pay Plaintiff overtime pay due.

1 47. Plaintiff, having been illegally deprived of the overtime pay to which he were legally
2 entitled, herein seeks restitution of such wages pursuant to the Business and Professions
3 Code §17203 in an amount subject to proof.

4 COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226
5 INADEQUATE PAY STATEMENTS

6 48. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-47 as if fully stated
7 herein.

8 49. California Labor Code Section 226 provides that all employers shall provide to
9 employees accurate and complete wage statements including, but not to limited to, an
10 accurate and current statement of all rates paid for all regular and overtime hours
11 worked during the pay-period, a complete and itemized statement of deductions, net
12 wages earned, the dates for which payment is being made, any and all applicable piece
13 rates, and the current address ad name of the employer.

14 50. California Labor Code Section 226 further provides that any employee suffering injury
15 due to a willful violation of the aforementioned obligations may collect the greater of
16 either actual damages or \$50 for the first inadequate pay statement and \$100 for each
17 inadequate statement thereafter.

18 51. During the course of Plaintiffs' employment, defendants consistently failed to provide
19 Plaintiffs with adequate pay statements as required by California Labor Code §226.

20 52. Defendants failed to provide such adequate statements willingly and with full
21 knowledge of their obligations under Section 226.

22 53. Defendants' failure to provide such adequate statements has caused injury to the
23 Plaintiffs.

24 54. Plaintiffs have incurred costs and fees in bringing this action and seek to recover such
25 costs under California Labor Code §226.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

55. For compensatory damages in an amount subject to proof
56. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount subject to proof
57. For restitution of unpaid overtime pay pursuant to California Business and Professions Code §17203 in an amount subject to proof
58. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid salaries pursuant to California Labor Code §1194(a) in an amount subject to proof;
59. For waiting time penalty damages of thirty days wages to Plaintiffs pursuant to California Labor Code § 203 in an amount subject to proof
60. For actual damages in an amount subject to proof for inadequate pay statements pursuant to California Labor Code Section 226;
61. For reasonable attorney's fees pursuant to California Labor Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;
62. For costs of suit herein; and
63. For such other and further relief as the Court may deem appropriate.

July 25, 2008

s/jdb

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ATTORNEY FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE
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FERNANDO RAMIREZ

Plaintiff,

vs.

DOSA PLACE INC. dba DOSAIPLACE,

UMAKANTH UPPALAPATI dba DOSAI

PLACE and DOSA PLACE INC.

Defendants

) CASE

) PLAINTIFF DEMANDS JURY TRIAL

Plaintiff demands a jury trial.

July 25, 2008

s/jdb

James Dal Bon

JS 44 - No. CALIF. (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I. (a) PLAINTIFFS

FERNANDO RAMIREZ

DEFENDANTS

DOSA PLACE INC. dba DOSAIPLACE,
UMAKANTH UPPALAPATI dba DOSAI PLACE
and DOSA PLACE INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of James Dal Bon
28 North 1st Street Suite 210, San Jose, CA 95133

ATTORNEYS (IF KNOWN)

C08 03613 PVT

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

(For diversity cases only)

- | | | | |
|---|--|---|--|
| Citizen of This State | PTF DEF
<input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF DEF
<input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 280 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 610 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 630 General <input type="checkbox"/> 636 Death Penalty <input type="checkbox"/> 640 Mandamus & Other <input type="checkbox"/> 650 Civil Rights <input type="checkbox"/> 655 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Legislation <input type="checkbox"/> 791 Empl./Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 866 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 29 U.S.C. 209, et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 40,000.00

☐ CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/25/08

